



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 7 2003

Mr. Kevin O'Brien
General Manager APMT
Maersk Sealand Inc.
5080 McLester Street
Elizabeth, NJ 07207

Ref. No. 02-0320

Dear Mr. O'Brien:

This is in response to your November 26, 2002 letter regarding the use of the International Maritime Dangerous Goods (IMDG) Code and the Hazardous Materials Regulations (HMR: 49 CFR Parts 171-180). Specifically, you ask if emergency contact information is required when shipping fumigated units to destinations within the continental United States.

Your question arises from the following scenario: under § 171.12(b), a hazardous material packaged in accordance with the IMDG Code may be offered for transportation and transported in and through the United States if all or part of the transportation is by vessel and the limitations in § 171.12(b) are met. Fumigated loads that do not otherwise meet the definition of a hazardous material under the IMDG Code are not required to have emergency response information, yet § 171.12(b)(16) requires shipments of hazardous materials to conform with the emergency response information requirements in subpart G of part 172. However, the HMR do not require emergency response information for fumigated loads (See § 173.9(h)).

As provided in § 173.9(h) shipments regulated solely as fumigated loads are not subject to emergency response information requirements for transportation within the United States under the IMDG Code.

Sincerely,

Susan Gorsky
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards



020320

173.9


MAERSK SEALAND

Johnsen

 §173.9(h)
 IMDG/Fumigation
 02-0320

November 26, 2002

Mr. Edward Mazzullo
 Office of Hazardous Material Standards
 Research and Special Programs Administration DHM-10
 Department of Transportation
 400 7th Street SW
 Washington DC 20590-0001

Dear Mr. Mazzullo:

Maersk Sealand is a vessel ocean common carrier involved in the global transport of containerized cargo. Due to the emphasis on preventing various pests from getting into the USA over the past several years, there are "containers under fumigation" being regularly transported on our vessels. Questions have arisen concerning the applicability of 49 CFR in relation to the IMDG in regard to fumigation.

The IMDG has a specific entry UN3359 for transport units under fumigation requiring:
 1) the FUMIGANT mark, 2) information about the fumigant on the shipping papers, and
 3) Class 9 placards (will be deleted in Amdt 32). In 49 CFR 173.9, the FUMIGANT mark and shipping paper information are also required but all other requirements are not applicable as per 173.9(h).

While onboard the vessel, the unit is transported in accordance with the IMDG. There is a proper shipping name, UN number, hazard class, fumigant information, warning mark, and placards. The shipping paper is usually the fumigation certificate supplied and signed by the fumigation company, not the actual consignor of the goods.

The question becomes what happens when the unit is discharged in the USA for inland transport to its destination? As the unit is moving under the IMDG, section 171.12(b) would apply, however, does 173.9(h) relieve the unit of all the other provisions in 171.12(b), especially the requirement in 171.12(b)(16) for emergency contact information in subpart G of part 172 which is not an IMDG requirement? In other words, does 173.9(h) take precedence over 171.12(b)? The regulations are not clear on this point.

MAERSK INC.

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If the intent of 173.9 is that the emergency contact information is not required for both international as well as domestic shipments, perhaps an entry should be made in 172.604(c) specifically identifying fumigation units.

We look forward to your clarification.

Respectfully,
Maersk Sealand

A handwritten signature in black ink, appearing to read "Kevin O'Brien", written over the printed name.

Kevin O'Brien
General Manager APMT
Hazmat – Security and Compliance